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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JULIET G. et al., Persons Coming
Under the Juvenile Court Law.

B221849

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK66396)

Plaintiff and Respondent,

v.

GABRIEL G.,

Defendant and Appellant.

APPEAL from orders of the Los Angeles County Superior Court. Valerie Skeba, Referee. Affirmed.

Joseph D. MacKenzie, under appointment by the Court of Appeal, for Appellant.

Office of the Los Angeles County Counsel, Andrea Sheridan Ordin, County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Respondent.

The juvenile dependency court entered orders terminating its jurisdiction over four dependent children, and referring the family to the family law court, where, in the words of the dependency court, “the parents can continue their battle” over the children. Father appeals, arguing the dependency court should have issued an “exit” order governing the children’s legal and physical custody, visitation and counseling. (See Welf. & Inst. Code, § 362.4.)¹ We disagree.

FACTS

Gabriel G. and Monica G. married in September 1996, and thereafter became the parents of four children: Juliet, born in July 1997; Isabella, born in September 1998; Delilah, born in August 2001, and Noah, born in August 2003. In June 2006, the family came to the attention of the Department of Children and Family Services (DCFS), after Monica called a domestic violence program and reported that Gabriel had hit her, and that he was “missing.” Gabriel, in fact, was in police custody at that time for hitting Monica; he was eventually convicted of a misdemeanor, and placed on probation. In July 2006, at which time Gabriel was residing outside of the family home, Gabriel and Monica signed a voluntary family preservation plan arranged by DCFS; the plan called for counseling services for all members of the family, and monitored visits between the children and Gabriel. By December 2006, however, DCFS decided to detain the children after several incidents involving Monica at monitored visits, and the growing concern that all four of the children were suffering emotional harm caused by being “caught in the middle of [a] divorce.” DCFS detained the children, and then released them to Monica, and, on December 26, 2006, DCFS filed a petition on behalf of their behalf (§ 300.)

In April 2007, the juvenile dependency court amended the petition to allege that Gabriel had used inappropriate physical discipline with the children, and that Monica was unable to protect the children. The court ordered monitored visits for Gabriel, granting DCFS the discretion to liberalize his visits. The court ordered all of the family members

¹ All further section references are to the Welfare & Institutions Code.

to participate in individual counseling programs. In July 2007, DCFS filed a report indicating that Gabriel had completed 49 of 52 sessions in his domestic violence program, and that it was considering liberalizing his visits with Delilah. DCFS also reported that Monica had stated she did not wish to do more individual therapy, and that she opposed liberalizing Gabriel's visitation because "only she [was] the expert" on Gabriel, and that "only she would know when it would be appropriate for [Gabriel] to have unmonitored visits with Delilah."

In July 2007, Isabella's therapist reported that Monica's "distrust of mental health services" may have been "negatively impacting" Isabella's counseling, and that Monica had "yelled" at the therapist during the sessions. At about the same time, Juliet's therapist reported that Monica had been "verbally hostile." Monica also expressed her belief that neither she nor the children should have to continue therapy. For his part, Gabriel had been compliant and cooperative with the therapist. According to the therapist, Gabriel expressed his eagerness for reunification, and had been patient with the process.

In December 2007, Delilah's therapist reported that Monica had begun blaming the therapist "for [the] judge's decision to leave the case open." Monica also stated she "firmly believed that it was [the therapist]'s fault." The therapist reported that Monica had become "more hostile," and had used "inappropriate" words toward the therapist when Monica was informed about reunification between the children and Gabriel. According to the therapist, Monica had spoken "harshly" about the therapist in front of her children. The therapist also stated that Monica had falsely accused her of making threats. In the therapist's own words, Monica had "continuously sabotaged her children's treatment process" to such an extent that the therapist had decided to end counseling Delilah.²

² In November 2007, Juliet's therapist had stopped counseling Juliet for similar concerns over Monica's behavior. At the same time, Isabella's therapist, joined by her colleagues, "filed a child abuse report . . . based on the suspicion that [Monica may have been] emotionally abusing her daughters by estranging the girls from their father and

In late January 2008, a court-appointed psychologist submitted a report indicating that Monica and Gabriel both appeared to be “fairly defensive and non-insightful.” The psychologist added that Monica had “obviously negatively influenced” her children against Gabriel. The psychologist advised the court that, since the children’s therapists had ended their counseling in November 2007, Gabriel had not had any visits with his children. At a hearing on January 23, 2008, the court appointed Lynda Doi-Fick to meet with the children, and to “begin the process of facilitating visitation” with their father. In March 2008, Gabriel’s counsel advised the court that Doi-Fick was unable to accept any appointments. At about the same time, a DCFS social worker told Gabriel that all visitation was cancelled until a “suitable counselor” could be found. At a hearing on May 19, 2008, the court strongly expressed its concerns that the family had not been involved in conjoint counseling, emphasizing that it was “unacceptable that it [had not] begun.”

In June 2008, DCFS filed a review report which stated that the family had “exhausted [its] service term” with DCFS. DCFS recommended that the juvenile dependency court terminate its jurisdiction, with orders for joint legal custody by Gabriel and Monica, and sole physical custody to Monica. The report did not mention the issue of visitation for Gabriel. At a hearing on July 9, 2008, the court indicated that it would not terminate its jurisdiction without visitation orders. More reports were filed. At a hearing on August 11, 2008, the court again indicated that it would not terminate its jurisdiction without any provision for visitation. More reports were filed. At a hearing on September 29, 2008, Gabriel agreed to have his visits monitored by a “professional monitor,” and the court ordered one visit in October, and two visits in November.

In December 2008, DCFS filed a review report detailing a conversation between the DCFS, CSW and Monica’s therapist. The therapist indicated that Monica “seem[ed] to feel as if, because [Gabriel] no longer loves her that he no longer loves his children and that they are a package and he cannot have one without the other.” The report also

speaking negatively about their father.” Isabella’s therapist also stopped her counseling services.

included a copy of an “Activity Log” from Shirley Douglas and Associates, a “supervised visitation agency.” The activity log detailed an attempted supervised visit between Gabriel and his children. The monitor cancelled the visit because of Monica’s actions. When the monitor arrived, Monica became very uncooperative, demanding telephone numbers of the monitor’s agency. Monica’s behavior escalated to yelling at the monitor and calling the sheriff. The children reacted by crying and becoming combative. Monica followed the monitor into the restaurant where Gabriel was waiting, leaving the children unattended in the car. Monica then yelled at Gabriel, claiming that it was his fault that their children were hungry.

At a hearing on January 5, 2009, the juvenile dependency court observed that it appeared that Monica was “sabotaging” Gabriel’s visitation. The court then ordered extensive visitation orders, and again directed that Lynda Doi-Fick be involved in assessing the family. The court specifically ordered Doi-Fick to meet with the parents and the children to address parental alienation issues and to facilitate visitation between Gabriel and the children.

In March 2009, Doi-Fick submitted a 59-page report which included observations of the interactions between Gabriel and the children at visits (they were mostly positive). In addition, it also relayed information about Doi-Fick’s dealings with Monica (she had threatened to “get [Doi-Fick] in court”). Doi-Fick’s report concluded that Monica had “not been truthful when providing information” about the children. Doi-Fick also opined that it was “likely” that Monica would have “difficulty” accepting any plan for visitation between Gabriel and the children, and that Monica would continue her “manipulation” of the children. DCFS continued to provide more reports through the rest of the year.

At a hearing on October 6, 2009, the juvenile dependency court indicated that the parties were in agreement with termination of the court’s jurisdiction. At the same time, the court expressed that it would not be “terminating [its jurisdiction] without a family law order.” At a hearing on October 27, 2009, the court called the matter for “receipt of a

family law order,” but the parties could not agree on terms for physical custody. As a result, the court set the matter for a contested hearing.

The juvenile dependency court conducted a two-day contested termination of jurisdiction hearing in December 2009 and January 2010. Gabriel testified on his own behalf; Monica did not testify, nor did any witness on behalf of the children. On January 6, 2010, the court terminated its jurisdiction without issuing any orders for the custody of the children or for visitation by Gabriel. The court noted that “neither parent poses a danger [to the children].” It then stated that it preferred to issue a custodial order that would “eliminate” the need to litigate the matter further, but was unable to do so. The court concluded that the family law court was in the best position to manage the custody and visitation issues because “there are no longer abuse issues.”³

DISCUSSION

Gabriel contends the juvenile dependency court should have issued custody and visitation orders pursuant to section 362.4 at the time it terminated its jurisdiction. DCFS has submitted a letter to our court stating that it takes no position on Gabriel’s contention. Monica has not submitted a brief on appeal. Gabriel is mistaken.

When a child is adjudged a dependent of the juvenile dependency court, any issues concerning custodial rights between his or her parents shall be determined solely by that court, so long as the child remains a dependent of the court. (§ 302.) When the juvenile dependency court terminates its jurisdiction over a dependent child, section 362.4 permits but does not require the court to make custody and visitations orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the family court. (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) The standard of appellate review of a decision of the juvenile dependency court to terminate its jurisdiction, and to issue or deny a custody order pursuant to section 362.4 is abuse of

³ As of September 17, 2010, the family law court has declined to make any child custody or visitation orders while the current appeal was pending. Therefore, this appeal is not moot.

discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; and see *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 [abuse of discretion standard generally].)

Here, the dependency court considered the option of a making custodial and visitation orders but specifically declined to do so. The court recognized its power to create such orders but exercised its discretion not to do so. It concluded that the family law court was in a better position to manage the litigation between Gabriel and Monica, including any custodial and/or visitation orders. Such a conclusion was not unreasonable and therefore not an abuse of the court's discretion.

DISPOSITION

The juvenile dependency court's orders dated January 6, 2010, are affirmed. The family law court may forthwith consider whether custodial and/or visitation orders are appropriate.

O'CONNELL, J.*

We concur:

RUBIN, Acting P. J.

FLIER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.